

REMARKS

Reexamination and reconsideration of the subject application, as amended, pursuant to and consistent with 37 C.F.R. §1.112, are respectfully requested in light of the following remarks.

Claims 1, 3-24, 26 and 29-31 are now in this application. Claims 2, 25, 27 and 28 have been canceled by the present amendment, without prejudice or disclaimer, and Claims 29-31 have been added.

The acknowledgment of the claim for foreign priority is noted, with appreciation.

Applicants also appreciate the Examiner's acknowledgment of the December 29, 2003 Information Disclosure Statement and return of an initialed copy of their Form PTO-1449.

The Examiner has noted the requirements for relying on the filing date of a prior-filed U.S. application under 35 U.S.C. §119(e) or 120. However, on October 30, 2003, a Preliminary Amendment was filed, adding at the proper location in the specification a paragraph which claimed the benefit of applicants' provisional application and correctly identified the provisional by application number and filing date. (See the USPTO's electronic records.) Unfortunately, the relationship to the earlier provisional was not correctly indicated, but this has been corrected in the Amendments to the Specification set forth above. More importantly, the claim for priority of the provisional was included in applicants' application transmittal letter filed August 26, 2003, with instructions to add that claim to the specification.

Furthermore, both the original filing receipt dated November 24, 2003 and the updated official filing receipt mailed by the Office on October 29, 2004, correctly

indicate that this application claims benefit of Appln. No. 60/405,720 filed August 26, 2002. According to M.P.E.P. 201.11(a), V, if the applicant includes a claim other than in the specified location within the required time period, the Office will not require a petition and surcharge to correct the benefit claim if it was recognized by the Office as shown by its inclusion on a filing receipt. Therefore, even if the August 26, 2003 instructions to amend the specification were not in correct form, no petition or surcharge is required in this case and the claim for benefit can be corrected as set forth hereinabove.

Claims 1, 27 and 28 have been rejected under 35 U.S.C. §112, second paragraph, as indefinite. The phrase "in particular" in Claim 1 has been deleted, and Claims 27 and 28 have been canceled. Therefore, the §112 rejection has been rendered moot and should be withdrawn. It is noted that the subject matter of the "in particular" phrase in Claim 1 now appears in separate new Claims 30 and 31. Also, while Claims 27 and 28 have been canceled, the subject matter therein has not been abandoned and applicants have merely canceled these claims in the interests of expediting prosecution.

Claims 1, 3-8, 10-12, 14-18 and 22-25 have been rejected under 35 U.S.C. §102(b) as anticipated by Tarantino WO 94/08623; however, Claims 2, 9, 13 and 19-21 have been objected to as being dependent upon a rejected claim but would be allowable if rewritten in independent form.

In order to expedite prosecution herein, applicants have introduced the subject matter of Claim 2 into Claim 1, overcoming the art rejection and essentially placing Claim 2 in independent, allowable form as amended Claim 1. Claim 2 has therefore been canceled as redundant. All other claims depend directly or indirectly

from Claim 1 and, since they now contain the limitation of original Claim 2, are clearly patentable over the art of record. The restriction of Claim 1 to the original Claim 2 subject matter is not an abandonment of the canceled subject matter or an acquiescence to the record §102 rejection. Applicants intend to pursue that subject matter separately and it is believed that arguments in support of its patentability would be more suitably presented in an application in which applicants intend to pursue claims to that subject matter.

In view of the introduction of the Claim 2 subject matter into Claim 1, it is submitted that the §102 rejection has been obviated and cannot be maintained herein.

It has been noted that original Claim 25 was worded as a European-style "use" claim. Claim 25 has been canceled in favor of new Claim 29, which is a method claim in better keeping with U.S. law and practice.

New Claims 30 and 31 are dependent method claims which specify the feature set forth in the "in particular" phase of original Claim 1.

The word "comprising" has replaced "containing" in Claims 1 and 3 and "consisting of" in Claim 26. This is believed to be appropriate since the specification clearly contemplates the possibility of additional ingredients.

No new matter has been added.

In view of the foregoing, it is believed that the claims are now free of all record rejections and objections. Further, favorable action in the form of a Notice of Allowance is believed to be next in order and is earnestly solicited.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: April 11, 2005

By: Mary Katherine Baumeister
Mary Katherine Baumeister
Registration No. 26,254

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620